REMARKS

Claims 1, 3 and 5-23 are pending in the application.

Claims 1, 3 and 5-23 stand rejected.

Claims 1, 3, 5, 8 and 11 have been amended.

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The second occurrence of claim 1 has been objected to. This second occurrence of claim 1 has been deleted, and so no longer appears in the listing of the claims, as can be seen in the listing of the claims above. Applicant respectfully submits that the Examiner's concerns in this regard are addressed thereby.

Rejection of Claims under 35 U.S.C. § 112

Claim 11 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 11 has been amended to address the Examiner's concerns. Applicant respectfully asserts that this rejection is overcome thereby.

Rejection of Claims under 35 U.S.C. § 102

Claims 1, 3, 5, 8, 9 and 11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Rockwell, et al., U.S. Patent No. 5,479,599 (Rockwell). Applicant respectfully traverses this rejection.

As an initial matter, Applicant does not concede that the reference is prior art, and so respectfully notes that amendments made herein are without prejudice to Applicant's right to establish, for example in this or a continuing application, that the reference is not prior art to an invention now or hereafter claimed.

Applicant respectfully submits that amended claims 1 and 8 are allowable over Rockwell. Claim 1 now recites:

1.   A method comprising:

creating a computing environment from a plurality of processing resources by allocating

    a plurality of the processing resources by

    displaying a list of the plurality of the processing resources on a display device,

        wherein

        the display device is coupled to a processor,

        the processor is configured to effect the allocating, and

        each of the plurality of the processing resources comprises at least one of a

            hardware processor and a software program;

accepting signals from a user input device, wherein

        the signals indicate the configuration of a selected processing resource of

            the processing resources, and

        the user input device is coupled to the processor; and

configuring the selected processing resource.

while claim 8 now recites:

8.   A system comprising:

a configurable communication link, the configured to meet a communications

        requirement of a processing environment;

a plurality of processing devices coupled to the communication link; and

a plurality of software programs executable by the processing devices, wherein

        the processing environment comprises the communication link, at least one of the

                processing devices and at least one of the software programs,

        each of the processing devices is of one of a plurality of processing device types,

        each of the software programs is of one of a plurality of software programs types,

                and

        the at least one of the processing devices and the at least one of the software

                programs are configured to meet a processing requirement of the

                processing environment.

As an initial matter, Applicant notes that Rockwell is concerned with the configuration

processors in a single multiprocessor computer. There are no operations of substance for

Rockwell's console to perform, other than activating or deactivating one or more of the

computer's processors. Applicants are unable to find any "configuration" of Rockwell's

processors suggested or even contemplated in the cited portions of Rockwell, or elsewhere

therein. Rockwell's disclosure thus fails to describe the need to allocate a processing resource,

nor the manner in which a processing resource should be allocated to create a computing

environment, but merely provide for the activation/deactivation of a processor or group of

processors. By contrast, the claimed invention is directed to the allocation of processing

resources (which Applicant notes can be a hardware processor and/or a software program, and

not simply a processor) in order to create a computing environment. Thus, unlike Rockwell, which deals only with the activation/deactivation of a processor or group of processors in a multiprocessor computer, the claimed invention acts on the processing resources being allocated to configure them into a computing environment, in order to meet the needs of the computing environment, and so the application to which the computing environment is put.

Moreover, as will be appreciated, the claimed invention's process of configuration includes the configuration of both hardware and software, which can be of disparate types, as is reflected in amended claims 3 and 8. The claimed invention's use of disparate types of processing resources is one of the claimed invention's strengths, allowing available processing resources to be configured to meet the needs of the application, notwithstanding the fact that those processing resources may differ from one another. Such capabilities are nowhere shown, taught or suggested by Rockwell. Rockwell's disclosure is infirm in this regard due to Rockwell's being concerned only with the activation/deactivation of a processor or group of processors in a single multiprocessor computer. Rockwell would not, therefore, reasonably be expected to show, teach or suggest the configuration or different types of the claimed invention.

This failure of Rockwell is brought into relief by the following claim limitations:

> accepting signals from the user input device to indicate the configuration of a selected processing resource of the processing resources; and configuring the selected processing resource.

Applicant respectfully submits that the cited sections of Rockwell cited as anticipating these limitations fail to do so. As with other cited sections of Rockwell, the cited sections discuss the activation/deactivation of a processor or group of processors in a single

-11-

multiprocessor computer, and do not show, teach or disclose the indication of the configuration of, or the configuration of a selected processing resource. As can be seen, the claimed invention is not simply activating/deactivating a processor or group of processors, the claimed invention is directed to the configuration of a (selected) processing resource. Applicant is unable to find a showing, teaching or disclosure of the indication of the configuration of, or the configuration of a (selected) processing resource in the cited portions of Rockwell.

Applicant respectfully posits that this is the case because the configuration of a processing resource, as in the claimed invention, would be beyond the approach taken by Rockwell, which instead relies on the homogeneity of a multiprocessor computer to allow a simple approach to the activation/deactivation of a processor or group of processors therein. Applicant therefore respectfully asserts that Rockwell fails to anticipate amended claims 1 and 8, as well as claims 3, 5, 9 and 11 depending therefrom, for at least the foregoing reasons.

Rejection of Claims under 35 U.S.C. § 103

Claims 6, 7, 10 and 12-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rockwell, et al., U.S. Patent No. 5,479,599 (Rockwell). Applicant respectfully traverses this rejection.

As an initial matter, Applicant requests clarification of the rejections of claims 6, 7, 10 and 12-23 under 35 U.S.C. § 103(a), in light of Rockwell. The Court of Appeals for the Federal Circuit has set forth requirements for rejections based on 35 U.S.C. § 103, which Applicants respectfully submit have not been met in at least the rejection of independent claims 3, 5, 8, 13, 15 and 16. "To reject claims in an application under section 103, an examiner must show an unrebutted *prima facie* case of obviousness. In the absence of a proper *prima facie* case of

-12-

obviousness, an applicant who complies with the other statutory requirements is entitled to a

patent." *In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir 1998) (citations

omitted).

Mere speculation or unfounded assumption is not sufficient to support a *prima facie* case

of obviousness. *See In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967); *In

re Sporck*, 301 F.2d 686, 690, 133 USPQ 360, 364 (CCPA 1962).

"To support the conclusion that the claimed combination is directed to

obvious subject matter, either the references must expressly or impliedly suggest

the claimed combination or the examiner must present a convincing line of

reasoning as to why the artisan would have found the claimed invention to have

been obvious in light of the teachings of the references... [S]implicity and

hindsight are not the proper criteria for resolving the issue of obviousness." *Ex

Parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Int'f 1985).

While it is expected that one skilled in the art, after reviewing the disclosure of the

present application, would be capable of designing a system of the claimed invention, there is

nothing in the statutes or the case law which makes that which is within the capabilities of one

skilled in the art synonymous with obviousness. *See Ex parte Gerlach and Woerner*, 212

U.S.P.Q. 471. Furthermore, the Board has held that the law is misstated by "equating that which

is within the capabilities of the skilled designer with obviousness." *In re Sung Nam Cho,* 813

F.2d 378. Applicant respectfully asserts that the Office Action equates skill in the art with

obviousness, and that irrespective of other of Rockwell's failings, the disclosure of Rockwell is

-13-

insufficient to make obvious the claimed invention, and such insufficiency is not remedied by the addition of skill in the art.

With respect to claims 6, 7, 10 and 12-23, Applicant respectfully requests that the Examiner provide greater detail as to the bases for these rejections or an affidavit as to the personal knowledge relied on within the meaning of 37 C.F.R. § 1.104(d)(2), which states:

"(2) When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons."

Alternatively, Applicant respectfully requests that a reference or particular parts of the cited references be designated, and the pertinence of each reference in support of the rejection as required by 37 C.F.R. 1.104(c)(2), which provides:

"(2) In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified."

With regard to claims 6, 7, 10 and 12-23, Applicant respectfully submits that Rockwell fails to show, teach or suggest the claimed invention recited thereby. For the reasons expressed in the section regarding 35 U.S.C. § 102, Rockwell does not contain all the limitations of amended independent claims 1 and 8. As noted therein, Rockwell discloses the activation/deactivation of a processor or group of processors in a single multiprocessor computer, but fails to reach the concepts involved in the allocation of processing resources by the indication of configuration or the configuration of a selected processing resource, as recited in claim 1, for example. As noted, the configuration of a specific resource is, in fact, antithetical to Rockwell, which is focused simply on activation/deactivation of a processor or group of processors.

Moreover, as correctly noted, Rockwell also fails to address performing such operations on different types of processing resources. This feature of the claimed invention is important because it allows for the creation of heterogeneous computing environments, created from different types of processing resources (e.g., a variety of hardware processors and/or software programs). Such capabilities are not disclosed in Rockwell because Rockwell is directed to the activation and deactivation of a processor (or group of processors) in a single multiprocessor computer.

Moreover, one of skill in the art would not arrive at the claimed invention for at least two reasons. First, Rockwell fails to show, teach or suggest the need for the allocation of different types of processing resources. This comes as no surprise, because Rockwell is directed to the activation and deactivation of the same types of processors, as one of skill in the art would expect to find in a single multiprocessor computer. Secondly, the step from a system capable of

-15-

activating and deactivating the same types of processors in a single multiprocessor computer, to

one capable of allocating processing resources to create a computing environment, is not

insubstantial. To say that the disclosure of Rockwell makes obvious the claimed invention begs

the question as to the inventiveness needed to conceive the claimed invention – and having

knowledge of the claimed invention obviates the need for reference to Rockwell in the first

place. Only in light of the disclosure of the present application could one possibly hope to arrive

at the claimed invention, and, in possessing such a disclosure, one of skill in the art would have

no use for that of Rockwell. But to employ the present disclosure as a blueprint for constructing

an argument as to the claimed invention's posited obviousness is to employ impermissible

hindsight, thus eviscerating such an argument at the outset.

For at least these reasons, Rockwell, even in light of skill in the art (which Applicant

maintains is neither appropriate nor properly defined in the Office Action), fails to make obvious

the claimed invention, as claimed in independent claims 1, 8, 13 and 15. Moreover, Applicant

respectfully asserts that claims 6, 7, 10,12, 14 and 16-23, which depend from independent claims

1, 8, 13 and 15, are also allowable, for at least the foregoing reasons.
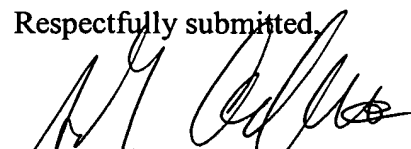
CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5084.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on **June 2, 2005**.

_____   _____
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-17-